

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 46 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

JAMNABEN WD/O PARSOTTAM MANGA

Versus

ALIAHMED SAMIULLAKHAN

Appearance:

MR JB PARDIWALA for Petitioners
NOTICE SERVED for Respondent No. 1, 2.
MR RR MARSHALL for Respondent No.3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/08/98

ORAL JUDGEMENT

This revision under section 115 of the Code of Civil Procedure is directed against the order of the Motor Accident Claims Tribunal, Valsad, district Navsari, rejecting application of the revisionists for restoration of Motor Accident Claim Petition No.67 of 1986 dismissed in default on 1.3.1993. Notices have been served upon the respondents. Mr. R.R. Marshall appeared for respondent No.3. However, respondents No. 1 and 2 remained absent

and none appeared for them.

Heard Mr.J.B.Pardiwala, learned Counsel for the revisionists and perused the order under revision.

The order under revision shows that the Motor Accident Claims Tribunal found that the revisionists were prevented by good and sufficient cause from appearing before the said Tribunal when the petition was taken up for hearing. However, restoration application was rejected on technical ground that no application for condonation of delay was filed along with restoration application.

It is equally clear from the order under revision that restoration application was barred by only 4 days time. Of course an application for condonation of delay should have been moved or there should have been prayer in the restoration application itself that the delay may be condoned. But neither any separate application was moved nor any request was made in the restoration application for condonation of delay. There is also no mention in the order under revision, that even oral request or prayer was made during argument before the Motor Accident CLaims Tribunal for condonation of delay. However, this is purely on account of the fault of the Advocate for the revisionists who conducted restoration application before the Tribunal. It is settled law that a party is not to be penalised for the mistake of his Counsel. It is a clear case where Counsel himself was at fault in not moving application for condonation of delay in time and also in not making such request specifically in the restoration application nor he made any oral request before the Tribunal. However, keeping in view the fact that only insignificant delay of 4 days was involved and further considering the finding of the Tribunal that the revisionists were prevented by good and sufficient cause from appearing on the date fixed for hearing of the claim petition, it is just and expedient to allow this revision and set aside the impugned order and remand the case for restoration of Claim Petition No. 67 of 1986 to the concerned Motor Accident Claims Tribunal. In view of the request made by the learned Counsel for the revisionists that the revisionists may be afforded an opportunity under the special circumstances to apply before the concerned Tribunal for condonation of delay, the interest of justice would be defeated if such request is turned down.

In view of the aforesaid discussions the revision is allowed. The order under revision is set aside. The

matter of restoration is remanded to the concerned Tribunal with direction that in case separate application for condonation of delay in moving restoration application duly supported by the affidavit, is filed, it shall be disposed of in accordance with law and thereafter, fresh order on restoration application shall be passed by the concerned Tribunal. In the circumstances of the case the parties shall bear their own costs of this revision.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt